

201300228

Stephen Franzel

At about 2:00 a.m. on December 23, 2012, a man driving home in Brooklyn became lost and performed a U-turn. A team of anti-crime officers observed him and pulled the car over, later claiming in their CCRB interviews that the SUV the man was driving had a broken taillight. One officer approached the drivers' side and asked the man if he had weapons in his car or on his person. The man claims that he was asked a series of questions about guns and denied owning any guns. The officer claims that the man said he had a gun at home, and on that basis decided to order the man to step out of the car and to search the car. The man was ordered out of the car and a third officer frisked him. This officer confirmed that she had no suspicions that the man was armed but frisked him as per her routine policy. The officers who searched the car found nothing illegal. The officer who frisked the man claimed he tried to punch her, and that she therefore arrested him. The man claimed that she asked him to turn around and he refused, at which point he was arrested.

The man was taken to the 73rd precinct, where he signed a "Consent to Search" form for officers to search his home. He later told the CCRB that he felt pressured to sign the consent form in order to be released from police custody. The signed form in hand, four officers went to the man's house, woke up his wife at 3 a.m., and searched the entire home. When they found no contraband, they told the woman her husband would only be released if she came to the precinct. She did so, and the man was issued a summons for disorderly conduct.

One officer, Steven Franzel, was not present for the initial car stop but joined on the search of the home. In his CCRB testimony, PO Franzel stated that he only stood by the front door and did not search the home. However, the other officers who conducted the search confirmed that he searched the upstairs, and he was identified as the wife as an officer who had searched her belongings upstairs.

Even had the man stated that he had a gun at home, that would not have given officers permission to search his car, so the search was illegal even crediting all of the officers' testimony.

The CCRB found that the officer who supervised the search of the car and home had abused his authority. The NYPD punished him by forcing him to forfeit 3 vacation days.

The CCRB found that Officer Franzel lied in his statement to the agency.

The NYPD determined that PO Franzel "failed to make activity log entries" regarding the incident and issued him a Command Discipline. His Brooklyn DA letter discloses the failure to make entries but not the false statement.

He has since been promoted to a sergeant in the Queens Narcotics Bureau.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Casados	Team: Team # 5	CCRB Case #: 201300228	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sun, 12/23/2012 2:05 AM	Location of Incident: [REDACTED]	Precinct: 73	18 Mo. SOL 06/23/2014	EO SOL 6/23/2014	
Date/Time CV Reported Sun, 12/23/2012 10:53 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/27/2012 9:04 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POF Stacey Ellis	22414	§ 87(2)(b)	073 PCT
2. SGT Christophe Muller	04155	§ 87(2)(b)	073 PCT
3. POM Derek Sambolin	06906	§ 87(2)(b)	073 PCT
4. POM Steven Franzel	26765	§ 87(2)(b)	073 PCT
5. An officer			073 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Christophe Muller	Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Christopher Muller searched the vehicle in which § 87(2)(b) was an occupant.	A . § 87(2)(g)
B . POF Stacey Ellis	Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis frisked § 87(2)(b).	B . § 87(2)(g)
C . POF Stacey Ellis	Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis used physical force against § 87(2)(b).	C . § 87(2)(g)
D . An officer	Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b).	D . § 87(2)(g)
E . SGT Christophe Muller	Abuse of Authority: Sgt. Christopher Muller entered and searched § 87(2)(b) in Brooklyn.	E . § 87(2)(g)
F . SGT Christophe Muller	Abuse of Authority: At § 87(2)(b) in Brooklyn, Sgt. Christopher Muller refused to provide his name and/or shield number to § 87(2)(b).	F . § 87(2)(g)
G . POM Derek Sambolin	Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Derek Sambolin refused to provide his name and/or shield number to § 87(2)(b).	G . § 87(2)(g)
H . POF Stacey Ellis	Abuse of Authority: At § 87(2)(b) in Brooklyn, PC Stacey Ellis refused to provide her name and/or shield number to § 87(2)(b).	H . § 87(2)(g)
I . POM Steven Franzel	Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Steven Franzel refused to provide his name and/or shield number to § 87(2)(b).	I . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
J . POF Stacey Ellis	Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis used physical force against § 87(2)(b) .	J . § 87(2)(g)
K . POF Stacey Ellis	Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Stacey Ellis frisked § 87(2)(b) .	K . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
N . POM Steven Franzel	Other: PO Steven Franzel intentionally made a false official statement when he said he did not search § 87(2)(b) in Brooklyn.	N . § 87(2)(g)

Case Summary

§ 87(2)(b) and § 87(2)(b) called IAB on December 23, 2012, and filed this complaint (encl. 4). The CCRB received the complaint on December 27, 2012 (encl. 5).

On December 23, 2012, at about 2:05 a.m., § 87(2)(b) was stopped in his vehicle at § 87(2)(b) and § 87(2)(b) in Brooklyn. After the vehicle stop, the officers searched the home of § 87(2)(b) and his wife, § 87(2)(b) at § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Christopher Muller searched the vehicle in which § 87(2)(b) was an occupant.** § 87(2)(g)
- **Allegation B – Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis frisked § 87(2)(b) § 87(2)(g)**
- **Allegation C – Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis used physical force against § 87(2)(b) § 87(2)(g)**
- **Allegation D – Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b) § 87(2)(g)**
- **Allegation E – Abuse of Authority: Sgt. Christopher Muller entered and searched § 87(2)(b) in Brooklyn.** § 87(2)(g)
- **Allegation F – Abuse of Authority: At § 87(2)(b) in Brooklyn, Sgt. Christopher Muller refused to provide his name and/or shield number to § 87(2)(b)**
- **Allegation G – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Derek Sambolin refused to provide his name and/or shield number to § 87(2)(b)**
- **Allegation H – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Stacey Ellis refused to provide her name and/or shield number to § 87(2)(b)**
- **Allegation I – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Steven Franzel refused to provide his name and/or shield number to § 87(2)(b) § 87(2)(g)**
- **Allegation J – Force: At § 87(2)(b) in Brooklyn, PO Stacey Ellis pushed § 87(2)(b)**
- **Allegation K – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Stacey Ellis frisked § 87(2)(b) § 87(2)(g)**
- § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

- **Allegation N – Other Misconduct: PO Steven Franzel intentionally made a false official statement when he said he did not search § 87(2)(b) in Brooklyn. § 87(2)(g)**

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

IAB Statement

§ 87(2)(b) provided a phone statement to IAB on December 23, 2012 (encl. 4).

§ 87(2)(g)

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on January 16, 2013 (encl. 6). He was interviewed at the CCRB's Metrotech office on January 22, 2013 (encl. 7). § 87(2)(g)

On December 23, 2012, at about 2:05 a.m., § 87(2)(b) left a social gathering, dropped someone off, and headed home in his truck. He refused to state what kind of social gathering he was at and who he had dropped off. He lives at § 87(2)(b) in Brooklyn. He had consumed no drugs or alcohol at the gathering, and he drove home alone in his four-door § 87(2)(b), which is an SUV that § 87(2)(b) referred to as a truck.

On his way home he got lost and he was pulled over. He thought he was pulled over in the vicinity of § 87(2)(b) in Brooklyn. However, he was later issued a summons that noted the location to be § 87(2)(b) and § 87(2)(b). He was not sure which address was correct. Whichever street he was on, he had made a U-turn so he could head in the right direction. Right after making the U-turn, he was instructed to pull over. He had seen no signs against making a U-turn. The officers were in a black, four-door unmarked car. § 87(2)(b) pulled over to the right side of the road, and the officers parked behind him. Four officers exited. § 87(2)(b) said it was late and dark so he could not see well. He thought two of the officers were dressed in plainclothes and two were in uniform.

An officer whom § 87(2)(b) described as a heavyset Hispanic man approached his driver's side window. The investigation identified this officer as PO Derek Sambolin. PO Sambolin told him he pulled him over for the U-turn. Upon request, § 87(2)(b) provided his vehicle paperwork, as well as a PBA card and his security guard license. PO Sambolin asked § 87(2)(b) if he was a gun owner and if he had any guns in his vehicle. § 87(2)(b) said no to each question. § 87(2)(b) could not recall PO Sambolin's exact words but, in effect, PO Sambolin asked him several times if he had a gun. In the interview, § 87(2)(b) was asked if he owned a gun and if he was authorized to carry a gun, and he answered no to each question.

PO Sambolin told § 87(2)(b) to step out of the vehicle because it was going to be searched. PO Sambolin escorted § 87(2)(b) to the back of the truck. § 87(2)(b) stood facing his truck, and a black female officer, identified by the investigation as PO Stacey Ellis, and

an officer whom § 87(2)(b) could not describe, including by race or whether or not he was in uniform, stood with him. (The investigation did not identify this officer.)

Once § 87(2)(b) was at the back of the truck, he noticed that an officer whom he described as a white man in his 40s or 50s (identified via investigation as Sgt. Christopher Muller) had approached the front passenger side of his truck. PO Sambolin and Sgt. Muller then searched the truck. PO Sambolin leaned into the front driver's side, and Sgt. Muller opened the front passenger side door and leaned in. § 87(2)(b) could not tell where the officers searched. He guessed that they searched his glove compartment and opened the center console. He did not see officers search his glove compartment, but he said he knew his center console was searched because it is always closed, and when he returned to his vehicle, some papers and CDs he keeps in there were shifted around.

§ 87(2)(b) watched the officers search for roughly one minute. Either PO Ellis or the unidentified officer at the back of the truck told him twice to turn around. § 87(2)(b) refused. He was then struck with multiple punches, on his back, both shoulders, and on both sides of the back of his head. § 87(2)(b) could not see which officers were punching him. § 87(2)(b) assumed that because he was hit so many times, PO Sambolin and Sgt. Muller must have come over and joined in. He did not know how many times he was punched. During the punching, he put his hands in front of his face and said, "Why y'all doing this?," "I'm a security guard," and, "My family is police." He was pushed up against his truck, with his left side smashed against it. His only injury was a bruised left shoulder. He assumed he sustained the bruise from being pushed against the truck. He never sought medical treatment and was unsure whether he ultimately would. He denied resisting arrest, fighting back, or provoking the officers.

§ 87(2)(b) was handcuffed but he did not know by whom, and once he was handcuffed he noticed that all four officers were at the back of the truck with him. One of the officers, possibly PO Sambolin, told him that he was going to be taken to the 73rd Precinct stationhouse where he would sign a paper authorizing the officers to search his house, and if they found no guns at his house, he would be released. § 87(2)(b) was placed in the back of the unmarked police car. He was hazy from the punching, it was dark out, he was upset about the incident, and he had tears in his eyes. He did not know who drove the police car and he did not know where the officers sat inside the police car. Later, when he was released from the stationhouse, his truck was there. He assumed that one of the officers had driven it there.

At the 73rd Precinct stationhouse, he was placed in a holding cell. PO Sambolin then took him out and walked him inside a room and presented him with a paper and told him he had to sign it. § 87(2)(b) said he read the paper "briefly." He could no longer recall what the paper said, but in sum, it was a search warrant authorization for his house. PO Sambolin never told § 87(2)(b) he had to sign the paper otherwise he would be kept in jail until after Christmas, but § 87(2)(b) said that was what was implied. He could not articulate why that was what was implied. He felt like he signed the paper under duress and intimidation.

§ 87(2)(b) was placed back in the holding cell. About an hour later, PO Sambolin released him and told him that the officers had searched his house. § 87(2)(b) was released. When he met up with his wife, § 87(2)(b) she told him that four officers searched their house, found no guns, and left, but not before giving her a ticket for § 87(2)(b). § 87(2)(b) provided the ticket to the CCRB. It is for § 87(2)(b), § 87(2)(a) CPL 160.50. § 87(2)(b) PO Ellis' name was on the ticket. § 87(2)(b) did not know which officer PO Ellis was.

Photo Viewing

On August 9, 2013, § 87(2)(b) arrived at the CCRB and viewed four photographic arrays. Each array contained one subject officer and five filler officers. The arrays, in order presented,

contained Sgt. Muller, PO Sambolin, PO Ellis, and PO Franzel. § 87(2)(b) accurately identified PO Ellis as a subject officer and said she was present when he signed the Consent to Search form. § 87(2)(b) did not recognize any of the other subject officers and he did not select a false positive (encl. 8).

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

IAB Statement

§ 87(2)(b) provided a phone statement to IAB on December 23, 2012 (encl. 4). § 87(2)(g)

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on January 16, 2013 (encl. 6). She was interviewed at the CCRB's Metrotech office on January 22, 2013 (encl. 9). § 87(2)(g)

On December 23, 2012, at about 3 a.m., § 87(2)(b) was at home, § 87(2)(b) waiting for § 87(2)(b). She was home alone. Her home has two floors, and there is a basement that is accessible from outside as well as from inside. § 87(2)(b)'s friend is a tenant of the basement apartment. § 87(2)(b) said that her tenant later told her she did not have knowledge of the incident, and § 87(2)(b) refused to provide the tenant's name.

§ 87(2)(b) had called § 87(2)(b) at about 2 a.m. and said he was on his way home, but by 3 a.m., he still had not arrived. She was upstairs and looking out her bedroom window when she saw an unmarked police car pull up and four plainclothes officers get out. § 87(2)(b) learned only Sgt. Muller's first name, and the other officers were identified by the investigation: PO Ellis, PO Sambolin, and PO Franzel. Before she got downstairs, the officers started to bang on her front door. § 87(2)(b) was wearing stretch pants and a tank top. Her clothes had no pockets.

She opened her front door. Sgt. Muller was standing in front of the other officers. He held out a piece of paper and said that the police had her husband, that he was in good condition, and that they were there to search her home. Sgt. Muller said, "We have a search warrant." § 87(2)(b) never got a good look at the paper, only that her husband's name was scribbled on the bottom of it. Without further discussion, the officers walked inside. As soon as all four officers were inside, she asked them, "May I have your names?" § 87(2)(b) said she spoke loudly and knew all of the officers heard her request, but none of them responded. A black female officer – PO Ellis – pushed § 87(2)(b) on her shoulders, causing her to back up against a wall. (In her phone statement, § 87(2)(b) claimed PO Ellis pushed her face rather than her shoulders.) She was not injured. PO Ellis then frisked § 87(2)(b) from shoulder to toe. After the frisk, PO Ellis asked § 87(2)(b) for her identification. § 87(2)(b) got it from a jacket in a closet and handed it to PO Ellis. Meanwhile, Sgt. Muller, PO Sambolin, and PO Franzel went upstairs and searched her home. § 87(2)(b) was able to distinguish between PO Sambolin and PO Franzel because she said PO Sambolin was a heavyset Hispanic man and PO Franzel was a slim, possibly Hispanic, man with glasses.) § 87(2)(b) did not stay with PO Ellis and followed the other officers upstairs. When she got upstairs, the officers were in her bedroom, and PO Sambolin and PO Franzel were doing all of the searching and were informing Sgt. Muller when areas were "clear."

PO Sambolin and PO Franzel searched all over: under her bed, in her closet, in her dresser drawers, in photo books, and inside shoe boxes. PO Sambolin and PO Franzel moved into her

son's bedroom. § 87(2)(b) followed them, but Sgt. Muller told § 87(2)(b) to go downstairs and get a drink of water. § 87(2)(b) did not want to go, but Sgt. Muller guided her down. Right away, § 87(2)(b) went back upstairs. When she got back upstairs, PO Sambolin and PO Franzel were now in her bathroom. PO Sambolin and PO Franzel looked behind the shower curtain and inside the toilet tank. All the officers went downstairs, and § 87(2)(b) followed.

Downstairs, Sgt. Muller asked § 87(2)(b) to sit with him on the couch. She did. Meanwhile, PO Sambolin and PO Franzel continued searching. She noticed they looked inside a small camera bag and that they opened closet doors and searched through there. They also looked under her coffee table and inside a bag that contained videos.

While Sgt. Muller was sitting with her, he told her his name was "Christopher," that he was from the "73rd Crime Unit," and that they investigate gun crimes. § 87(2)(b) told him that neither she nor her husband had a gun. Sgt. Muller stood up and told § 87(2)(b) that she needed to arrive at the 73rd Precinct stationhouse in 20 minutes, otherwise her husband's arrest would be processed. The officers left, and she immediately went to the stationhouse. (In her phone statement, § 87(2)(b) alleged that as the officers were leaving, she asked PO Sambolin and PO Franzel for their names, and one of them said, "No" and both officers walked away.)

At the stationhouse, Sgt. Muller approached § 87(2)(b) and handed her a summons. He told her that it was for § 87(2)(b). She read the summons, and it was for disorderly conduct, and an officer named "Ellis" had written it. § 87(2)(b) again asked Sgt. Muller for a copy of the "search warrant," and he pretended like he did not hear her and walked away. § 87(2)(b) was informed that her husband was not going to be released for a while so she left the stationhouse without him.

NYPD Statements:

Subject Officer: SERGEANT CHRISTOPHER MULLER

- *Sgt. Muller, a white man, 5'8" tall, 195 pounds, with black hair that is balding, and blue eyes, was § 87(2)(b) old at the time of the incident.*
- *On the date of the incident, Sgt. Muller was assigned as the Anti-Crime supervisor in the 73rd Precinct. He was dressed in plainclothes, and he worked from 10 p.m. on December 22, 2012, to 8:44 a.m. on December 23, 2012. He was partnered with PO Derek Sambolin, PO Stacey Ellis, and PO Steven Franzel. They worked in an unmarked, black Crown Victoria.*

Memo Book

Sgt. Muller's memo book entries were consistent with his statement below (encl. 10).

CCRB Testimony

Sgt. Muller was interviewed at the CCRB on May 17, 2013 (encl. 11).

On December 23, 2012, at about 2:05 a.m., Sgt. Muller, PO Ellis, and PO Sambolin were driving on patrol when they observed § 87(2)(b) driving in the vicinity of § 87(2)(b) and § 87(2)(b). PO Franzel was partnered with the officers at the start of the tour but he was feeling ill, so earlier on, the officers had dropped him off at the 73rd Precinct stationhouse. When the officers observed § 87(2)(b), PO Sambolin was driving and Sgt. Muller was in the front passenger seat. The officers observed that § 87(2)(b) vehicle had a broken taillight. Sgt. Muller explained that he could not see any furtive movements when driving behind § 87(2)(b) because § 87(2)(b) was driving an SUV and the officers were in a car. When § 87(2)(b) pulled over, PO Sambolin approached the front driver's side and Sgt. Muller went to the front passenger side. Sgt. Muller could not recall where PO Ellis went.

While walking toward § 87(2)(b) vehicle, Sgt. Muller did not see § 87(2)(b) make any furtive movements. At the passenger side, Sgt. Muller could not recall whether the window

was raised or lowered. However, he recalled it was tinted, and he was able to see PO Sambolin speaking to § 87(2)(b) but could not hear their conversation. Sgt. Muller observed § 87(2)(b) present his license. Sgt. Muller could not recall whether § 87(2)(b) presented his registration and proof of insurance. Sgt. Muller observed PO Sambolin speak with § 87(2)(b) for about ten seconds and then PO Sambolin asked § 87(2)(b) to exit the vehicle.

PO Sambolin walked § 87(2)(b) to the back of the vehicle, and Sgt. Muller followed. PO Sambolin explained to Sgt. Muller why he had asked § 87(2)(b) to exit the vehicle. PO Sambolin recounted that he had asked § 87(2)(b) if he had a weapon in his vehicle, and § 87(2)(b) had replied that he had a gun at home. PO Sambolin and Sgt. Muller returned to the front of the vehicle to search for a firearm at the same sides they were at before. § 87(2)(b) stayed at the back of the vehicle with PO Ellis.

Sgt. Muller searched under the front passenger seat, between the seat and the door, and in the passenger foot well. Sgt. Muller stated, “I probably popped open his glove box, to make sure that there was nothing in there, and also I don’t remember if he gave his registration and insurance. If he hadn’t, I probably looked for it in there.” Sgt. Muller stated he may have searched the glove compartment: “To make sure that there wasn’t a weapon inside, and if he hadn’t given his registration and proof of insurance, to obtain the registration and proof of insurance.” Sgt. Muller did not recall if he opened the center console and did not recall if he moved the seat. Sgt. Muller looked from the front seat into the backseat. Sgt. Muller stated that PO Sambolin searched the driver’s side floorboard, door area, and under the driver’s seat. Sgt. Muller did not recall seeing PO Sambolin open any containers. The officers did not remove anything from the vehicle.

While searching the front passenger area, Sgt. Muller heard a commotion coming from the back of the vehicle. Sgt. Muller described the commotion as “loud, abusive cursing,” and he thought he heard, “Fucking bitch.” Sgt. Muller then heard a bang against the back of the vehicle, and upon reaching the back of the vehicle, he found that PO Ellis had handcuffed § 87(2)(b). PO Ellis told Sgt. Muller that § 87(2)(b) had tried to hit her. Sgt. Muller did not see how she apprehended § 87(2)(b). Sgt. Muller did not strike § 87(2)(b) nor did he recall seeing any other officers do so. Sgt. Muller observed no injuries on § 87(2)(b) and did not recall hearing § 87(2)(b) complain of pain. Sgt. Muller did not recall whether § 87(2)(b) was frisked, but he stated that § 87(2)(b) was probably frisked because he had “previously stated that he possessed a firearm” and “for officer safety.”

Sgt. Muller could not recall if any uniformed officers responded. Sgt. Muller could not recall who drove § 87(2)(b) to the stationhouse and could not recall who drove § 87(2)(b) vehicle there. He was unsure if he requested a car with a cage to the scene.

At the 73rd Precinct stationhouse, Sgt. Muller took § 87(2)(b) into the anti-crime division’s office, and PO Sambolin and PO Ellis accompanied them. PO Franzel was not in the room. § 87(2)(b) stated that he did not have a gun at home. Sgt. Muller asked § 87(2)(b) to sign a Consent to Search form so the officers could search his house for a firearm. § 87(2)(b) signed the form. Sgt. Muller stated that he did not verbally intimidate § 87(2)(b) into signing the form or suggest that § 87(2)(b) would be held during Christmas if he refused to sign. Sgt. Muller further recalled that he overheard someone in the room, possibly PO Sambolin, ask § 87(2)(b) why he first claimed he had a gun at home and then later denied that he had a gun. Sgt. Muller could not recall § 87(2)(b) response.

Sgt. Muller, PO Sambolin, PO Ellis, and PO Franzel went to § 87(2)(b) home at § 87(2)(b). Sgt. Muller knocked on the door and § 87(2)(b) answered. Sgt. Muller introduced himself as Sgt. Muller from the 73rd Precinct. At the CCRB, Sgt. Muller recounted that he said that her “husband was in police custody but that he was safe, that during the course of events he said that he had a firearm in the house, that he signed a Consent to Search form for the house, and that we’d like to look in the house to make sure there was no firearm.” § 87(2)(b)

allowed the officers inside. Sgt. Muller could not recall if he showed the Consent to Search form to § 87(2)(b). He denied that he presented the Consent to Search form as a search warrant.

§ 87(2)(b) may have asked the officers for their names at some time when they were in the house. Sgt. Muller recalled that when she asked, he told her his first name. He did not recall the other officers' responses, and he did not recall if he heard, at any point, the other officers stating their names. PO Ellis did not back § 87(2)(b) up against a wall or frisk her. Sgt. Muller recalled that § 87(2)(b) was wearing clothes that could not conceal something.

Sgt. Muller, PO Sambolin, and PO Franzel went upstairs to search the bedroom and § 87(2)(b) followed. Sgt. Muller searched near a window on one side of the bed. Sgt. Muller recalled PO Sambolin and PO Franzel looking under the bed and in the nightstands. During the search, Sgt. Muller suggested to § 87(2)(b) that she might wish to go downstairs so she would not have to watch the search in case it bothered her. § 87(2)(b) and Sgt. Muller went downstairs and § 87(2)(b) got a glass of water. Sgt. Muller and § 87(2)(b) sat together on a couch. Sgt. Muller recalled that he and § 87(2)(b) discussed § 87(2)(b) stop, and that he said that if the officers did not find a gun there was nothing to worry about.

Sgt. Muller remained downstairs and did not watch PO Sambolin and PO Franzel continue searching. At the CCRB, he stated that they "could have searched the entire upstairs." While he was downstairs, Sgt. Muller searched behind the couch and in the couch cushions, and he looked around the kitchen. He did not recall opening any cabinets or drawers while searching downstairs, but he stated that he might have. He recalled that PO Sambolin and PO Franzel searched elsewhere, in "places where a firearm might commonly be found." Sgt. Muller and the officers found no contraband or § 87(2)(b).

§ 87(2)(b) later came to the stationhouse accompanied by two men who were in an auto club. Sgt. Muller stated that he may have let § 87(2)(b) look at the Consent to Search form then. He could not recall if § 87(2)(b) asked for a copy. If she had asked for a copy, he would not have given her one as it is an interdepartmental form and not a public record.

Subject Officer: PO DEREK SAMBOLIN

- *PO Sambolin, a Hispanic man, 220 pounds, 5'10" tall, with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the date of the incident, PO Sambolin was assigned to Anti-Crime in the 73rd Precinct. He was dressed in plainclothes, and he worked from 10 p.m. on December 22, 2012, to 6:35 a.m. on December 23, 2012. He was partnered with Sgt. Muller, PO Ellis, and PO Franzel. They worked in an unmarked sedan.*

Memo Book

PO Sambolin stated that he lost his memo book that contained the entries for the incident and that he completed a Complaint Report (UF 61), per procedure, about having lost the memo book. The investigator requested the UF 61 and it yielded negative results (encl. 25J).

CCRB Statement

PO Sambolin was interviewed at the CCRB on May 16, 2013 (encl. 12).

Before stopping § 87(2)(b) the officers had dropped off PO Franzel at the stationhouse because he was feeling ill. When the officers observed § 87(2)(b) PO Sambolin was driving. § 87(2)(b) was stopped for driving with a broken brake light. PO Sambolin could not recall if § 87(2)(b) was stopped for any other traffic violations. § 87(2)(b) was not stopped for anything related to firearms. Before § 87(2)(b) pulled over, PO Sambolin saw him moving around in his vehicle. PO Sambolin did not know if § 87(2)(b) was reaching or grabbing for anything, but he saw him duck his head down and look side to side. PO Sambolin categorized the

movement as furtive.

When § 87(2)(b) stopped, PO Sambolin approached the front driver's side and Sgt. Muller went to the front passenger side. PO Ellis stayed at the rear of the vehicle. PO Sambolin explained to § 87(2)(b) that he had a broken brake light and asked him for his vehicle paperwork. § 87(2)(b) provided it. PO Sambolin asked § 87(2)(b) if there were any weapons or drugs in the vehicle. PO Sambolin stated that this is a standard question that he asks of "almost everybody who I think look suspicious." PO Sambolin expressed that aside from ducking down, § 87(2)(b) had done nothing else that was furtive. § 87(2)(b) asked what PO Sambolin meant by weapons. PO Sambolin asked § 87(2)(b) if he had a gun in his vehicle. § 87(2)(b) replied, "No, I have one at home." PO Sambolin stated that § 87(2)(b) reply "raised my suspicion" and he decided to ask § 87(2)(b) out of the vehicle.

PO Sambolin explained that he asked § 87(2)(b) to exit his vehicle in order to "make sure there wasn't any weapons in his lungeable or grabbable area." PO Sambolin suspected there might be a gun in § 87(2)(b) vehicle because § 87(2)(b) said he had a gun at home and because § 87(2)(b) had ducked his head down before pulling over. PO Sambolin also stated that when § 87(2)(b) admitted to having a gun at home, he wondered whether the gun was legally owned, and, "Who's at home with access to the weapon?"

§ 87(2)(b) briefly argued about having to step out but then complied. PO Sambolin told § 87(2)(b) to walk to the rear of the vehicle and stand with PO Ellis. PO Sambolin went on to check whether the vehicle identification number (VIN) on § 87(2)(b) vehicle matched that on his registration. PO Sambolin could not recall where the VIN was in the vehicle, but he believed it was on the driver's side door jamb. The VIN matched § 87(2)(b) registration. PO Sambolin then searched underneath the driver's seat and in the spaces between the seat and the center console. He did not move the seat or open any closed containers. While PO Sambolin searched the driver's side, Sgt. Muller opened the front passenger door. PO Sambolin did not know whether Sgt. Muller searched the vehicle.

PO Sambolin searched for about 30 seconds, at which point he heard a commotion at the rear of the vehicle and heard PO Ellis "asking for help." PO Sambolin went to the rear and found PO Ellis, Sgt. Muller, and § 87(2)(b) who was in handcuffs. PO Ellis said that § 87(2)(b) had tried to punch her. PO Sambolin did not see § 87(2)(b) being placed in handcuffs. PO Sambolin did not see any officer punch § 87(2)(b) and he did not observe any bruising on § 87(2)(b). After § 87(2)(b) was placed in handcuffs, uniformed officers arrived in a marked police car. PO Sambolin could not recall who they were, describe them, or recall their command. Sgt. Muller instructed the uniformed officers to take § 87(2)(b) to the stationhouse because his vehicle did not have a partition. PO Sambolin told Sgt. Muller that § 87(2)(b) said he had a gun at home, and the officers took § 87(2)(b) to the stationhouse to question him about it.

PO Sambolin did not know whether § 87(2)(b) was frisked at the scene of the car stop. PO Sambolin could not recall who drove § 87(2)(b) vehicle to the stationhouse.

At the stationhouse, PO Sambolin and Sgt. Muller took § 87(2)(b) upstairs to the Field Intelligence Officer's office. After some time, PO Ellis joined them. PO Franzel was not there. PO Sambolin and Sgt. Muller asked § 87(2)(b) about his firearm, and whether he had a legal permit for it. § 87(2)(b) said that he did not have a gun at home. The officers asked § 87(2)(b) if they could go to his house and check, and § 87(2)(b) said, "Yes, absolutely, of course, go check my house." PO Sambolin and Sgt. Muller explained to § 87(2)(b) that he needed to sign a Consent to Search form, and § 87(2)(b) did so. PO Sambolin and his partners did not intimidate § 87(2)(b) into signing the form. PO Sambolin and Sgt. Muller explained to § 87(2)(b) that the decision whether to sign the form was completely up to him.

PO Sambolin, Sgt. Muller, PO Ellis, and PO Franzel went to § 87(2)(b) house. § 87(2)(b)

§ 87(2)(b) answered and Sgt. Muller introduced himself. PO Sambolin could not recall what Sgt. Muller said to introduce himself. PO Sambolin told § 87(2)(b) “Hi, I’m Officer Sambolin.” PO Sambolin heard each officer then independently and voluntarily introduce himself or herself by name. PO Sambolin did not hear § 87(2)(b) ask for officers’ names. Sgt. Muller explained the situation and displayed the Consent to Search form to § 87(2)(b).

Upon entering the house, PO Ellis did not push § 87(2)(b) nor did PO Ellis frisk § 87(2)(b). PO Sambolin recalled that § 87(2)(b) was wearing a nightgown, which is “not a concealing garment.” PO Sambolin could not recall if PO Franzel went upstairs, but he and Sgt. Muller did, and they searched a bathroom and in a bedroom they searched nightstands, a dresser, and a closet. Downstairs, PO Franzel joined the search, and the officers searched the living room, in a closet under the stairs and sifted through motorcycle gear, opened a camera bag, and opened a bag under a coffee table that had DVDs. PO Sambolin did not recall Sgt. Muller sitting on the couch with § 87(2)(b).

Upon returning to the stationhouse, PO Sambolin did not see § 87(2)(b). Sgt. Muller decided to release § 87(2)(b) with only a summons because § 87(2)(b) was “very cooperative.”

Subject Officer: PO STACEY ELLIS

- *PO Ellis, a black woman, 5’5” tall, 180 pounds, with black hair, and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the date of the incident, PO Ellis was assigned to Anti-Crime in the 73rd Precinct. She was dressed in plainclothes, and she worked from 10 p.m. on December 22, 2012, to 6:35 a.m. on December 23, 2012. She partnered with Sgt. Muller, PO Sambolin, and PO Franzel. They worked in an unmarked, black Crown Victoria.*

Memo Book

PO Ellis’ memo book entries were consistent with her statement below (encl. 13).

CCRB Testimony

PO Ellis was interviewed at the CCRB on April 18, 2013 (encl. 15).

PO Ellis stated that PO Franzel was present for § 87(2)(b) vehicle stop. § 87(2)(b) was stopped for a defective rear brake light. PO Ellis was seated behind the driver’s seat. PO Sambolin approached § 87(2)(b). Sgt. Muller went to the front passenger side, and PO Ellis and PO Franzel stood at the back of § 87(2)(b) vehicle.

PO Ellis could partially hear PO Sambolin but could not hear § 87(2)(b). PO Sambolin asked § 87(2)(b) for his vehicle paperwork and PO Sambolin asked § 87(2)(b) something about a security license. She could not recall anything else PO Sambolin asked. PO Sambolin spoke with § 87(2)(b) for up to four minutes and then asked him out of the vehicle. PO Sambolin escorted § 87(2)(b) to PO Ellis. On the walk back, PO Ellis looked at § 87(2)(b). He was wearing a leather coat that had front pockets. She did not observe any bulges on his coat. She did, however, observe an unidentified bulge in one of § 87(2)(b) front jeans pockets. She could not recall which pocket. PO Ellis did not know what the bulge was. At the CCRB, she said, “Only way I knew what it was when I touched it.” She could not provide the dimensions of the bulge. She said it was “just a bulge that I saw.”

PO Ellis asked § 87(2)(b) if he had anything illegal on his person, or anything that would stick her. He said no. PO Ellis frisked § 87(2)(b). She said she frisked him for her safety and his and to make sure that he did not have a weapon. § 87(2)(b) did not present a fear for her safety. She did not think § 87(2)(b) was in possession of a weapon. In regard to frisking § 87(2)(b) she added, “It is standard procedure.” She frisked § 87(2)(b) from his chest down

to his ankles. She did not search him. She felt two bulges during the frisk, the unidentified one on his jeans, and the other in an unrecalled coat pocket. She did not suspect either bulge was a weapon. When she felt his jeans pocket, she felt a hard object that she knew was a cell phone. The bulge in the coat pocket felt like leather and was “square and bulky.” She thought it was a wallet. She asked § 87(2)(b) if it was a wallet, and he said yes. She did not remove the wallet or cell phone from his pockets.

About the time that PO Ellis was frisking § 87(2)(b) PO Sambolin and Sgt. Muller searched the front lungeable areas of § 87(2)(b) vehicle. PO Ellis clarified that she did not know exactly where PO Sambolin and Sgt. Muller searched, but they leaned into § 87(2)(b) vehicle for up to three minutes.

After the frisk, § 87(2)(b) turned and faced the officers searching his vehicle, and he took a step toward the driver’s side. PO Ellis placed her hand on § 87(2)(b) shoulder, and § 87(2)(b) suddenly turned around and threw a punch at her with his right hand. PO Ellis moved and § 87(2)(b) punch missed. PO Ellis pushed § 87(2)(b) against his vehicle. At some time around this point, additional uniformed officers arrived on scene in a marked police car. Together, the additional officers, PO Franzel, and PO Ellis grabbed § 87(2)(b) arms and body, turned him around, and handcuffed him. PO Ellis did not know who the additional officers were. She said they happened to drive by when the incident was happening and stopped. She did not know how many additional officers there were. She said there were maybe five, they may have been men, and they were from her command. At the CCRB, PO Ellis was asked why § 87(2)(b) was not arrested given that he tried to punch her, and she said it was Sgt. Muller’s decision to release him with a summons. PO Ellis said that § 87(2)(b) was not punched by any officer. She did not punch him, and she did not observe any injuries on him.

§ 87(2)(b) was driven to the stationhouse by the additional officers. An unrecalled officer drove § 87(2)(b) vehicle to the stationhouse.

At the stationhouse, PO Ellis assisted an officer who was not involved in § 87(2)(b) incident with arrest processing. Sgt. Muller, meanwhile, took § 87(2)(b) somewhere out of her sight. She said there is an upstairs room at the stationhouse where Anti-Crime officers can take people to be interviewed and he may have been taken there. A while later, Sgt. Muller approached her and told her that the same team who stopped § 87(2)(b) was now going to go to § 87(2)(b) home to search it because § 87(2)(b) admitted possessing a firearm.

At § 87(2)(b) Sgt. Muller explained the situation to § 87(2)(b) and showed her the Consent to Search form. § 87(2)(b) permitted the officers to come inside.

After entering, PO Sambolin, PO Franzel, and Sgt. Muller went upstairs. PO Ellis stayed with § 87(2)(b) downstairs. She told § 87(2)(b) without being asked, what her name was. PO Ellis did not hear § 87(2)(b) ask any officer for their name. PO Ellis did not back § 87(2)(b) against a wall, and she did not frisk her. PO Ellis asked § 87(2)(b) for her identification, and § 87(2)(b) got it and handed it to PO Ellis, and PO Ellis wrote down § 87(2)(b)’s information in her memo book. PO Ellis said she asked § 87(2)(b) for her identification so she could know and note with whom she was dealing.

§ 87(2)(b) stayed with PO Ellis the whole time the officers were there. PO Ellis said there was not a time where § 87(2)(b) went upstairs. PO Ellis estimated that her partners were upstairs for five or six minutes. Her partners then came back downstairs, and the three of them went into § 87(2)(b)’s kitchen. PO Ellis stayed in the living room with § 87(2)(b) and she did not know where her partners looked in the kitchen. The officers came out of the kitchen and into the living room, and they opened up closet doors and looked in there. PO Ellis said there was a time in the living room when Sgt. Muller was explaining to § 87(2)(b) why the officers were there, but PO Ellis did not recall Sgt. Muller telling her his name.

The officers left. When they returned to the stationhouse, § 87(2)(b) was already there. PO

Ellis wrote § 87(2)(b) a disorderly conduct summons and gave it to § 87(2)(b) PO Ellis never observed § 87(2)(b) speaking with Sgt. Muller at the stationhouse.

Subject Officer: PO STEVEN FRANZEL

- *PO Franzel, a white man, 6' tall, 170 pounds, with black hair and hazel eyes, was § 87(2)(b) old at the time of the incident. He wears prescription glasses, and had a beard at the time of the interview.*
- *On the date of the incident, PO Franzel was assigned to Anti-Crime in the 73rd Precinct. He was dressed in plainclothes, and he worked from 10 p.m. on December 22, 2012, to 6:35 a.m. on December 23, 2012. He partnered with Sgt. Muller, PO Sambolin, and PO Ellis. They worked in an unmarked, black Crown Victoria.*

Memo Book

At 10:30 p.m., PO Franzel went on administrative duty at the stationhouse, as he was sick. His next entry was at 6:35 a.m., noting the end of his tour (encl. 16).

CCRB Statement

PO Franzel was interviewed at the CCRB on April 26, 2013 (encl. 17).

PO Franzel maintained that he started his tour with the three other officers but then felt ill and was dropped off at the stationhouse where he conducted administrative duties until his partners returned to the stationhouse. When informed that PO Ellis thought that PO Franzel was present for the vehicle stop, PO Franzel stated that she was mistaken. PO Franzel said he was not present to observe § 87(2)(b) sign a Consent to Search form at the stationhouse.

At the 73rd Precinct stationhouse, before the home search, Sgt. Muller informed PO Franzel that § 87(2)(b) had voluntarily signed a Consent to Search form and that he and the rest of the team were going to search § 87(2)(b) home for a firearm.

The four officers went to § 87(2)(b) and § 87(2)(b)'s home. At the front door, Sgt. Muller explained to § 87(2)(b) that her husband was under arrest at the precinct and that he had signed a Consent to Search form. § 87(2)(b) opened the door and said, "Come in." PO Franzel identified himself voluntarily to § 87(2)(b) saying, "I'm Officer Franzel, with the 73rd Precinct." All of PO Franzel's partners similarly introduced themselves. PO Franzel did not hear § 87(2)(b) request the officers' names. PO Ellis did not frisk § 87(2)(b) or push her.

Once inside the house, PO Franzel stayed on the main level, in the living room, with § 87(2)(b). Sgt. Muller and PO Sambolin went upstairs. PO Franzel did not remember where PO Ellis went. § 87(2)(b) then also went upstairs. PO Franzel stayed on the first floor, in the living room and then on the landing of the stairs. PO Franzel denied searching upstairs. He did not search anywhere in the house, whether upstairs or downstairs. Upon returning downstairs, PO Ellis, PO Sambolin, and PO Franzel remained in the living room. Sgt. Muller and § 87(2)(b) sat down at the table in the dining room. Sgt. Muller showed her the Consent to Search form. § 87(2)(b) reviewed the form for a "couple of minutes." PO Franzel did not search the main level of the home, nor did he observe any other officer do so.

Upon returning to the stationhouse, PO Franzel was standing at the front desk when § 87(2)(b) entered. § 87(2)(b) spoke with Sgt. Muller but PO Franzel did not hear their conversation.

NYPD Documents

Consent to Search Form

§ 87(2)(b) signed the form on December 23, 2012, and, in sum, the form gives the police department authorization to search for and seize any wanted person, crime evidence, or

contraband found at § 87(2)(b). The form also states that § 87(2)(b) was informed of his right to revoke his consent at any time and consents knowingly and voluntarily, without threat, to giving his consent to have his residence searched. PO Sambolin and PO Ellis signed the form as witnesses to § 87(2)(b) giving his consent, and Sgt. Muller signed off as the supervisor who reviewed the document (encl. 18).

73rd Precinct Command Log

§ 87(2)(b) was logged in at 2:25 a.m. as a “new arrest” for § 87(2)(b). § 87(2)(b) physical and mental condition is noted as “apparently normal.” § 87(2)(b) was released from the stationhouse at 4 a.m. with a summons (encl. 19).

Summons for Incident and Disposition

- As of July 24, 2013, neither E-courts nor the Office of Court Administration contains any records for § 87(2)(b) summons (encl. 22). § 87(2)(b) informed the CCRB that the summons was dismissed (encl. 23F).

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York on April 29, 2013, claiming that § 87(2)(b) was falsely arrested, falsely imprisoned, assaulted, and maliciously prosecuted by officers from the 73rd Precinct. § 87(2)(b) reportedly sustained injuries to his head, face, back, and limbs. The extent of his injuries were unknown. § 87(2)(b) was seeking as redress a sum not to exceed five million dollars. Though § 87(2)(b) also filed the claim, there is no indication in the claim about what happened to her (encl. 21).

Civilians’ Criminal History

- As of July 23, 2013, the Office of Court Administration reveals no criminal convictions for § 87(2)(b) (encl. 22T).
- As of July 23, 2013, the Office of Court Administration reveals the following criminal conviction for § 87(2)(b)
 - § 87(2)(b)

Civilians’ CCRB History

- § 87(2)(b)

Subject Officers’ CCRB History

- PO Ellis has been a member of the service for five years and PO Franzel has been a member of the service for five years. There are no substantiated CCRB allegations against either of them (encl. 2D-2E).
- PO Sambolin has been a member of the service for six years and there are two substantiated CCRB allegations against him for one case:
 - In CCRB 200801475, the CCRB substantiated allegations against him for a vehicle stop and for a discourteous action and recommended charges. PO Sambolin pleaded guilty to the charges and the NYPD penalized him 25 vacation days (encl. 2B-2C).
- Sgt. Muller has been a member of the service for 13 years, and there are three substantiated CCRB allegations against him for one case:
 - In CCRB 200611570, the CCRB substantiated allegations against him for a question

and/or stop, a refusal to provide name and/or shield number, and a search of person, and cited him for other misconduct for failing to prepare a Stop, Question, and Frisk report. The CCRB recommended charges for the other misconduct and the allegations. The NYPD did not take disciplinary action against him because the statute of limitations had passed before the close of the case (encl. 2A).

Conclusion

Allegations Not Pleaded

An allegation of an officer refusing to show a search warrant was not pleaded because the officers were not in possession of a search warrant. They had a Consent to Search form, and whether or not an officer must show that form upon request is not a CCRB allegation.

Identification of Subject Officers

§ 87(2)(b) stated that he was stopped by four officers. He accurately described PO Sambolin as a heavyset Hispanic man, PO Ellis as a black woman, and Sgt. Muller as a white man. He thought Sgt. Muller was in his 40s but he was actually § 87(2)(b) old at the time of the incident. § 87(2)(b) could not describe the fourth officer including by race or what he was wearing (uniform or plainclothes), and he did not identify PO Franzel in a photographic array. § 87(2)(b) however, alleged that the fourth officer punched him along with PO Ellis. PO Ellis said that PO Franzel was present for § 87(2)(b) vehicle stop, but the other officers including PO Franzel stated that he was at the stationhouse at the time because he was sick.

The vehicle search allegation is pleaded against Sgt. Muller because he was present throughout the vehicle stop, he participated in the vehicle search, and he was the officers' supervisor. A frisk allegation was pleaded against PO Ellis because she admitted to frisking § 87(2)(b). A force allegation was pleaded against PO Ellis because § 87(2)(b) alleged she pushed and punched him, but because neither the investigation nor § 87(2)(b) could accurately identify PO Franzel or another officer as using force against § 87(2)(b), an additional force allegation was pleaded against "an officer" from the 73rd Precinct.

§ 87(2)(b) accurately described the four officers who entered her home. She described PO Sambolin as a heavyset Hispanic man, PO Franzel as a slim man with glasses, Sgt. Muller told her his first name and had the most interaction with her, and she accurately described PO Ellis as a black woman. § 87(2)(b)'s allegations are pleaded in accordance with her statement. However, the home search allegation was pleaded against Sgt. Muller because he was the supervisor of the other officers and said he was present when § 87(2)(b) signed the Consent to Search form.

Because PO Sambolin lost his memo book but did not prepare a Complaint Report and because PO Franzel did not note that he went to § 87(2)(b) in his memo book, failure to prepare memo book entries were pleaded respectively against PO Sambolin and PO Franzel.

Because PO Franzel said he did not search § 87(2)(b)'s home in any fashion, even though PO Ellis, PO Sambolin, Sgt. Muller, and § 87(2)(b) said he did, an allegation of making a false official statement was pleaded against him.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Christopher Muller searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Sambolin searched the front driver's side of § 87(2)(b) vehicle and Sgt. Muller searched the front passenger side.

§ 87(2)(b) alleged that, upon being stopped, PO Sambolin asked him without reason if he

owned a gun. § 87(2)(b) said he said no but was then asked to step out and PO Sambolin and Sgt. Muller went on to search the vehicle. § 87(2)(b) could not tell where in his vehicle the officers searched. He guessed that they searched his glove compartment and said he confirmed that the center console was searched because some papers and CDs he keeps in there were shifted around.

PO Ellis § 87(2)(g) She stood at the back of the vehicle during the initial discussion between PO Sambolin and § 87(2)(b) and when the vehicle search happened, she could not tell where her partners looked.

PO Sambolin said that before § 87(2)(b) pulled over he made a furtive movement by ducking down and looking around. Sgt. Muller, § 87(2)(g) said the officers were in a car and § 87(2)(b) was in a taller vehicle and the officers could not see inside § 87(2)(b) vehicle before approaching him.

PO Sambolin further stated that when he approached § 87(2)(b) he asked § 87(2)(b) as a routine question § 87(2)(g) if he had guns or drugs in his vehicle. § 87(2)(g) § 87(2)(b) responded by saying that he did not have a gun in his vehicle but does have one at home. Based on this response and the § 87(2)(g) furtive movement, PO Sambolin said he searched the lungeable area of § 87(2)(b) vehicle to ensure he did not have a weapon. PO Sambolin denied opening any closed containers.

Sgt. Muller said that at the back of the vehicle, PO Sambolin told him that § 87(2)(b) said he had a gun at home. Based on that, Sgt. Muller searched the front passenger side including opening the glove compartment. He said he searched the glove compartment to make sure there was no weapon in there and to make sure that § 87(2)(b) had provided his vehicle paperwork.

In order for officers to perform a vehicle search that includes closed containers, they must have probable cause to believe that the vehicle contains a weapon, contraband, or evidence of a crime. People v. Smith, N.Y. App. Div. 5857 (2012 – 2nd Dept.) (encl. 1A-1B).

§ 87(2)(g)

Based on § 87(2)(b) alleged response of possessing a gun at home, PO Sambolin and Sgt. Muller searched § 87(2)(b) vehicle and Sgt. Muller entered the glove compartment. § 87(2)(g)

Allegation B – Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis frisked § 87(2)(b)

PO Ellis admitted to frisking § 87(2)(b) When § 87(2)(b) was walked toward her at the back of the vehicle, she observed one bulge on § 87(2)(b) person, on one of his front jeans pockets. She did not know what the bulge was and could not describe its dimensions. PO Ellis said she frisked § 87(2)(b) for her safety and to make sure that § 87(2)(b) did not have a weapon. At the CCRB, PO Ellis was asked if § 87(2)(b) presented a fear for her safety, and she said no. She was asked if she thought that § 87(2)(b) was in possession of a weapon, and she said no. In regard to frisking § 87(2)(b) she added, “It is standard procedure.” She frisked § 87(2)(b) outside garments. She felt two bulges, the unidentified one on his jeans, and the other in an unrecalled coat pocket. She did not suspect either bulge of being a weapon. When she felt his jeans pocket, she felt a hard object she knew was a cell phone. She said the bulge in the coat pocket felt like leather and was “square and bulky,” and turned out to be a wallet.

An officer can frisk an individual if the officer has reasonable suspicion that the person is armed. People v. Debour, 40 N.Y.2d 210 (1976). (encl. 1C-1M).

PO Ellis admitted that § 87(2)(b) did not pose a threat to her and that she did not suspect him of having a weapon, and she stated that she frisked § 87(2)(b) per routine procedure.

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, PO Stacey Ellis used physical force against § 87(2)(b)

§ 87(2)(b) alleged that when he was watching the vehicle search either PO Ellis or the unidentified officer told him twice to turn around. He refused to turn around because he wanted to watch the vehicle search. He said he was then struck with multiple punches, to his back, both shoulders, and on both sides of the back of his head. § 87(2)(b) could not assign specific punches to specific officers and refused to estimate how many times he was punched. He said he was then pushed up against his vehicle, with his left side smashed against it, and was handcuffed. His only injury was a bruised left shoulder. He assumed he sustained the bruise from being pushed against the vehicle. He never sought medical attention. He denied resisting arrest, fighting back, or provoking the officers.

PO Ellis stated that after the frisk § 87(2)(b) faced the officers searching his vehicle, and he took a step toward the driver's side. PO Ellis said she placed her hand on § 87(2)(b) shoulder, and § 87(2)(b) suddenly turned around and threw a punch at her with his right hand but missed. PO Ellis pushed § 87(2)(b) against his vehicle. At some time around this point, additional uniformed officers happened to arrive in a police car. Together, the additional officers, PO Franzel, and PO Ellis grabbed § 87(2)(b) arms and body and handcuffed him. The investigation did not identify the additional officers and could not confirm that they arrived. PO Ellis said that § 87(2)(b) was not punched by any officer.

PO Franzel denied that he was present for the incident, which was corroborated by PO Sambolin and Sgt. Muller.

PO Sambolin and Sgt. Muller said they were conducting the vehicle search at the time when § 87(2)(b) was handcuffed and thus did not know how he was apprehended. All they knew was what PO Ellis told them, which was that § 87(2)(b) tried to punch her at the back of the vehicle. When PO Sambolin arrived at the back of the vehicle, § 87(2)(b) was in handcuffs and with PO Ellis and Sgt. Muller. Sgt. Muller stated that when he arrived back there, PO Ellis was alone with § 87(2)(b) and he was in handcuffs. PO Sambolin and Sgt. Muller observed no injuries on § 87(2)(b). Sgt. Muller could not recall if additional officers ever responded, and PO Sambolin said unidentified uniformed officers arrived after § 87(2)(b) was handcuffed.

Ultimately § 87(2)(b) was summonsed for violent and threatening behavior for the attempted punch, but he was not arrested.

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: At § 87(2)(b) and § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation E – Abuse of Authority: Sgt. Christopher Muller entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that § 87(2)(b) was stopped in his vehicle for a traffic infraction and that PO Sambolin initiated an inquiry of whether § 87(2)(b) was in possession of a gun. It is undisputed that § 87(2)(b) was taken to the 73rd Precinct stationhouse in handcuffs and that at the stationhouse he signed a Consent to Search form. It is undisputed that four officers went to his home at § 87(2)(b) to search for a gun but did not discover a gun.

The copy of the Consent to Search form indicates that the signee gives voluntary permission – without threat or intimidation – for police officers to search the signee’s home for crime evidence or contraband. PO Sambolin and PO Ellis signed the form as witnesses to § 87(2)(b) giving his consent, and Sgt. Muller signed off as the supervisor who reviewed the document.

§ 87(2)(b) alleged that at the site of the vehicle stop, an officer, possibly PO Sambolin, told him that he was going to be taken to the stationhouse where he would sign a paper authorizing the officers to search his home. At the stationhouse, he was placed in a holding cell. PO Sambolin took him out, walked him inside a room, and presented him with a paper and told him he had to sign it. § 87(2)(b) said that at least PO Ellis was also in the room. § 87(2)(b) read the paper “briefly” and thought it was a search warrant for his home. At the CCRB, § 87(2)(b) said he signed the paper under intimidation. He said it was implied to him – but never spoken to him – that if he did not sign the paper, he would be kept in police custody until after Christmas. § 87(2)(b) could not articulate any other way in which he was intimidated.

PO Ellis and PO Franzel claimed they were not present when § 87(2)(b) signed the form. PO Sambolin and Sgt. Muller corroborated PO Franzel but they did not corroborate PO Ellis. They said she was in the room when § 87(2)(b) signed the form.

According to Sgt. Muller, § 87(2)(b) signed the form in the anti-crime division’s office, which is an upstairs room. PO Sambolin said § 87(2)(b) signed the form in the field intelligence officers division’s office, which is also upstairs.

According to Sgt. Muller and PO Sambolin, at the site of the vehicle stop, § 87(2)(b) told PO Sambolin he had a gun at home. PO Sambolin wondered who in the home had access to the gun and if the gun was legal. Based on § 87(2)(b) alleged admission of having a gun at home, PO Sambolin said Sgt. Muller authorized taking § 87(2)(b) to the stationhouse for questioning.

At the stationhouse, the officers denied forcing § 87(2)(b) to sign the form under intimidation. Sgt. Muller and PO Sambolin said § 87(2)(b) was asked about the gun at home and § 87(2)(b) denied having any gun. Then, the officers said, § 87(2)(b) was presented with the Consent to Search form and Sgt. Muller asked § 87(2)(b) if it would be acceptable to search the home to find out the truth, and Sgt. Muller told § 87(2)(b) that signing the form was voluntary. § 87(2)(b) voluntarily signed the form.

§ 87(2)(g)

§ 87(2)(g)

Consent cannot occur when individuals are coerced to comply with what they would prefer to deny. Florida v. Bostick, 501 U.S. 438 (1991). (encl. 1N-1Z).

§ 87(2)(b) alleged it was implied, though not spoken, that he would not have been released had he not signed the form. § 87(2)(g)

Allegation F – Abuse of Authority: At § 87(2)(b) in Brooklyn, Sgt. Christopher Muller refused to provide his name and/or shield number to § 87(2)(b)

Allegation G – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Derek Sambolin refused to provide his name and/or shield number to § 87(2)(b)

Allegation H – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Stacey Ellis refused to provide her name and/or shield number to § 87(2)(b)

Allegation I – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Steven Franzel refused to provide his name and/or shield number to § 87(2)(b)

§ 87(2)(b) alleged that right after all four officers entered her home she asked them loudly and clearly, “May I have your names?” None of the officers responded. Later on, Sgt. Muller sat with § 87(2)(b) on her couch and Sgt. Muller told her his name was Christopher and what command he was from. § 87(2)(b) was also handed a summons for her husband, and it was written by PO Ellis, but § 87(2)(b) did not know which officer Ellis was.

Sgt. Muller said he introduced himself by rank and last name. Then, at an unrecalled point, § 87(2)(b) asked all the officers for their names, and Sgt. Muller said he responded by providing his first name but he could not recall how or if his partners responded.

PO Sambolin and PO Franzel both said that they did not hear § 87(2)(b) ask the officers for their names, but rather, when the officers entered § 87(2)(b)'s home, the officers voluntarily stated their ranks and last names one at a time.

PO Ellis said that § 87(2)(b) did not ask the officers for their names, and when the other three officers went upstairs, PO Ellis voluntarily told § 87(2)(b) what her last name was.

§ 87(2)(g)

Allegation J – Force: At § 87(2)(b) in Brooklyn, PO Stacey Ellis pushed § 87(2)(b)

Allegation K – Abuse of Authority: At § 87(2)(b) in Brooklyn, PO Stacey Ellis

frisked § 87(2)(b)

§ 87(2)(b) alleged that after asking for names, PO Ellis pushed her to a wall and frisked her. In her phone statement, § 87(2)(b) alleged that PO Ellis pushed her face but in her interview statement alleged that PO Ellis pushed her shoulders. § 87(2)(b) stated that she was wearing clothes not conducive to concealing a weapon at the time she was frisked.

All four officers said PO Ellis did not push or frisk § 87(2)(b) and PO Sambolin, Sgt. Muller, and PO Ellis said § 87(2)(b) was wearing pajamas that were not conducive to concealing a weapon so there would not have been reason to frisk her.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation N – Other Misconduct: PO Steven Franzel intentionally made a false official statement when he said he did not search § 87(2)(b) in Brooklyn.

PO Franzel stated that Sgt. Muller had informed him that he and his partners were headed to § 87(2)(b) in Brooklyn and were going to search the residence for a gun. Despite going there to perform a home search, PO Franzel said that upon arrival he never participated in the search and did not move beyond the living room and a stairway landing.

§ 87(2)(b) accurately described PO Franzel as one of the officers who searched the upstairs of her home. Sgt. Muller said PO Franzel participated in the home search. PO Ellis stated that PO Franzel went upstairs with the other officers, assuming he searched up there, and she said he searched in the kitchen when downstairs. PO Sambolin could not recall if PO Franzel went upstairs but confirmed that he and PO Franzel searched downstairs in the areas where § 87(2)(b) alleged they had.

Patrol Guide Section 203-08 states that providing a false official statement is prohibited when being interviewed by a Civilian Complaint Review Board investigator (encl. 1AD). False statements made by officers during the course of an official investigation constitute misconduct when there is a motive to fabricate. Police Department v. Lafemina, OATH Index No. 1168/91. (encl. 1AE-1AK).

Team: 5

Investigator:	_____	<u>Daniel Casados</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date



Eric Gonzalez
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**

350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

[INSERT NAME]
Assistant District Attorney

[INSERT DATE]

[INSERT D/C INFO]

Re: [INSERT CASE NAME]
Kings County Dkt./Ind. No. [#####]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: **STEVEN FRANZEL**

MOS TAX: [REDACTED]

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:

ON APRIL 2, 2014, IN AN ORAL DECISION GRANTING A FEDERAL DEFENDANT'S MOTION TO SUPPRESS A FIREARM SEIZED FROM HIM ON NOVEMBER 13, 2013, AS WELL AS STATEMENTS MADE BY HIM FOLLOWING HIS ARREST, UNITED STATES DISTRICT JUDGE JOHN GLEESON FOUND THE TESTIMONY PROVIDED BY POLICE OFFICER ANDREW KAMNA, SHIELD NUMBER 24865, AT THE SUPPRESSION HEARING TO BE INCREDIBLE. MORE SPECIFICALLY, JUDGE GLEESON CONCLUDED THAT P.O. KAMNA'S TESTIMONY REGARDING THE CIRCUMSTANCES SURROUNDING THE STOP OF THE DEFENDANT'S CAR TO BE CONTRADICTED BY OTHER POLICE TESTIMONY AND TO BE INTERNALLY INCONSISTENT. AND, ALTHOUGH TWO OTHER POLICE OFFICERS - POLICE OFFICER STEVEN FRANZEL, SHIELD NUMBER 16063, AND POLICE OFFICER RICHARD CLERI, SHIELD NUMBER 26765 -- CORROBORATED ONE ASPECT OF P.O. KAMNA'S TESTIMONY (NAMELY, THAT THE DEFENDANT DROVE THROUGH A STOP SIGN), JUDGE GLEESON DID NOT CREDIT THEIR TESTIMONY ABOUT THE TRAFFIC INFRACTION, BECAUSE IT WAS CONTRADICTED BY THAT OF SERGEANT MATTHEW CAHILL, WHOM THE JUDGE DID CREDIT.

THE TRANSCRIPT OF JUDGE GLEESON'S APRIL 2, 2014 ORAL DECISION IN UNITED STATES V. RAYMOND JONES, NO. 13-CR-708 (JG) (E.D.N.Y.) IS ATTACHED HERETO.

Disclosure # 2:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 12/23/2012 AGAINST MOS FRANZEL:

1. MOS FRANZEL, ASSIGNED TO THE 73RD PRECINCT, FAILED TO MAKE ACTIVITY LOG ENTRIES REGARDING HIS PARTICIPATION IN AN INCIDENT.

CASE STATUS: CLOSED ON 06/18/2014

PENALTY: SCHEDULE B COMMAND DISCIPLINE, LOSS OF TWO (2) HOURS AND 'B' CD ISSUED

Disclosure # 3:

THE NYPD ENTERED A DISPOSITION OF MINOR PROCEDURAL VIOLATION FOR THE FOLLOWING ALLEGATION, DATED 01/22/2016:

ALLEGATION:

1. MEMOBOOK INCOMPLETE/IMPROPER

CASE STATUS: CLOSED ON 05/30/2016

Disclosure # 4:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 07/16/2019, AGAINST MOS FRANZEL:

ALLEGATION:

1. INVOICE DISCREPANCY - LAB - MARIJUANA
2. REPORT INCOMPLETE/ INACCURATE - PROPERTY CLERK INVOICE

CASE STATUS: CLOSED ON 08/08/2019

ACTION TAKEN: VERBAL INSTRUCTIONS

Disclosure # 5:

MOS FRANZEL IS A NAMED DEFENDANT IN THE FOLLOWING CIVIL ACTION:

DORIAN A, SIMET V. CITY OF NEW YORK, ET AL, 7939/13, FILED IN KINGS COUNTY SUPREME COURT

Disclosure #6:

THE PEOPLE ARE AWARE OF THE FOLLOWING FEDERAL CIVIL RIGHTS ACTION(S) AND/OR STATE TORT CIVIL LAWSUIT(S) IN WHICH THE INDICATED OFFICER HAS BEEN NAMED AS AN INDIVIDUAL DEFENDANT.

NOTE, THE DISPOSITION INFORMATION MAY NOT BE CURRENT:

PLAINTIFF	DOCKET	COURT	FILED	DISPOSED	DISPOSITION
Angelique Lewis	17-CV-66	E.D.N.Y.	1-5-17		Pending, plaintiff's civil assault claim dismissed pursuant to summary judgment motion, defendants' filed notice of appeal to Second Circuit seeking reconsideration of judge's denial of dismissal of other counts
Eric Morris-Mendoza	18-CV-4127	E.D.N.Y.	7-19-18	7-25-19	Settlement, without admission of fault or liability
David Moore	12-CV-5480	E.D.N.Y.	11-5-12	8-2-13	Settlement, without admission of fault or liability
Rayquan Callahan	13-CV-3607	E.D.N.Y.	6-26-13	2-4-14	Settlement, without admission of fault or liability
Yves Brice	011178/2013	Kings Cty. Sup. Ct.	7-22-13		Pending
Shakeeba Glenn	13-CV-6875	E.D.N.Y.	12-6-13	7-20-15	Settlement, without admission of fault or liability
Nicholas	14-CV-1552	E.D.N.Y.	3-7-14	3-30-15	Settlement,

Tencati-Soverall					without admission of fault or liability
Sean McFadden	14-CV-6940	E.D.N.Y.	11-26-14	10-8-15	Settlement, without admission of fault or liability
Terry Jones	15-CV-573	E.D.N.Y.	2-5-15	1-8-16	Settlement, without admission of fault or liability
Daquinn Gibson	008224/2015	Kings Cty. Sup. Ct.	7-2-15		Pending
Keon Britton	15-CV-6710	E.D.N.Y.	11-23-15	4-19-16	Settlement, without admission of fault or liability

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH OCTOBER 13, 2020, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 7:

CCRB CASE: 201300228

REPORT DATE: 12/27/2012

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

SEE ATTACHMENT BELOW.

Eric Gonzalez
District Attorney
Kings County